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**IN THE HIGH COURT OF JUDICATURE AT BILASPUR:
CHHATTISGARH**

SECOND APPEAL NO. 186 OF 2006 **Single Bench**

Appellant
Plaintiff

Raidhar S/o Sonadhar
aged about 48 years, R/o
Village Kinjoli, Tahsil –
Jagdalpur
Distt. Bastar (Chhattisgarh)

Versus

Respondents
Defendants

1. (a) Domai, Wd/o Late Guru
aged 50 Years

(b) Dhanpati, S/o Late Guru
28 Years

(c) Dumardhar, S/o Late Guru
aged about 22 years

(All R/o Village – Kakodi, Semra
Tahsil – Kotpad, Distt. Koraput
(Orissa)

2. Mangal S/o Jagannath, aged
about 70 years, Caste –
Bhatra, R/o Village – Kinjoli
Tahsil – Jagdalpur, Distt.
Bastar (Chhattisgarh)

3. State of Chhattisgarh through
the Collector, Distt. Bastar,
Jagdalpur (Chhattisgarh)

4. Mu. Nanday, S/o Firangi,
Caste – Bhatra, aged about
61 years, R/o Village – Kinjoli
Tahsil – Jagdalpur, Distt.
Bastar (Chhattisgarh)

5. Motiram, S/o Mohan, Bhatra,
aged about 48 years,

6. Shreeram, S/o Mohan Bhatra,
aged about 48 years,

(Sl. No. 5 & 6 R/o Village – Kokdi,
Semra, Tehsil – Kotpad, Distt.
Kotpad, Distt. Koraput (Orissa)

**SECOND APPEAL UNDER SECTION 100 OF CODE OF CIVIL
PROCEDURE, 1908**

P.R. No. 1213/186
Presented by Shri. M. Nanday, Mochi
Dated 27/9/06

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HIGH COURT OF CHHATTISGARH, BILASPUR

S.A No. 186 of 2006

Raidhar

Vs.

Domai & others

Ku. Sharmila Singhai, counsel for the appellant.

ORDER
(28.6.2006)

SUNIL KUMAR SINHA, J,

(1) This is the plaintiff's second appeal filed under Section 100 of C.P.C.. The plaintiff lost in both the Courts.

(2) This appeal has been directed against the impugned judgment and decree dated 27.1.2006 passed in Civil Appeal No. 18-A/2005 by IVth Additional District Judge (FTC), Bastar, Jagdalpur Chhattisgarh, arising out of Judgment and decree dated 8.11.2004 passed in Civil Suit No. 75-A/98 by 1st Civil Judge, Class-II, Jagdalpur, Chhattisgarh.

(3) The brief facts are that the plaintiff filed a suit for declaration of title and also for declaration that the order passed by the Revenue Court on 28.7.93 is null and void. He also prayed for decree of confirmation of possession. The plaintiff allegations are that the suit lands were the self acquired property of Shri Arjun, who was son of one Dudi. It is pleaded that Arjun was having two children namely Jamna Bai and Kuldhar. On account of death of Kuldhar, Arjun has adopted Sonadhar (father of the plaintiff) as his

son and he succeeded the property of schedule -A of the plaint in his successory rights and after the death of Sonadhar, the plaintiff who is son of Sonadhar succeeded the said property. The plaintiff claims the ownership on the basis of successory right in the said manner in line of succession of deceased Arjun. This allegation was denied by the defendants. They pleaded that the suit property was not self acquired property of Arjun. They further pleaded that Sonadhar was not adopted by Arjun and he was not the adopted son, therefore, question of succeeding the property of Arjun by the plaintiff, who is son of Sonadhar, does not arise.

(4) The trial Court framed various issues in this case and in answer to issue No. 3, it was held that the suit property was the self acquired property of Arjun. However, it was further held that the plaintiff could not establish that his father namely Sonadhar was taken in adoption by Arjun and on this ground, the trial Court dismissed the suit. Against the aforesaid judgment and decree passed by the trial Court, the plaintiff filed an appeal before the lower appellate Court. The lower appellate Court also took the same view and confirmed the judgment and decree passed by the trial Court. It is against the said judgment and decree, passed by the Lower Appellate Court, the plaintiff has filed this second appeal under Section 100 of C.P.C.

(5) After going through the judgment of 2 Courts below and further after going through the evidence of various witnesses recorded in this case, it is apparent that the plaintiff could not establish that his father namely Sonadhar was adopted son of Arjun as there appears to be no sufficient evidence of valid adoption of Sonadhar by Arjun in this case. In the opinion of this Court, the trial Court has rightly held that the plaintiff failed to prove a

valid adoption of his father by Arjun. There is no perversity in the concurrent findings recorded by 2 Courts below.

(6) In the matter of **Roop Singh (dead) through L.Rs. - Vs- Ram Singh (dead) through L.Rs., reported in (2000) 3 SCC pg.708**, it has been laid down by the Apex Court that "it has to be reiterated that under Section 100 C.P.C., the jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve the substantial question of law and it does not confer any jurisdiction on the High Court to interfere with the pure questions of fact while exercising its jurisdiction under Section 100 C.P.C."

(7) It was again held by the Apex Court in the matter of **Thiagarajan and others -Vs- Sri Venugopalaswami B. Koil and others, reported in (2004) 5 SCC pg.762** that "the existence of a substantial question of law is the sine qua non for the exercise of jurisdiction under the amended provision of Section 100 C.P.C."

As to what would amount to substantial question of law has been dealt in the matter of **Santosh Hazari -Vs- Purushottam Tiwari (2001) 3 SCC 179** and it has been held that "a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involved in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of the fact arrived at by Court of facts and it must be necessary to decide that question of law for a just and proper decision of

the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

(8) In the opinion of this Court, no substantial question of law involves in this appeal. The appeal has no merits. The same is dismissed at the motion stage itself.

vatti

Sd/-
Sunil Kumar Sinha
Judge